

Page 38	Page 40
<p>1 what's that process for that?</p> <p>2 A. The process would be explained to you as --</p> <p>3 when you work, by the end of the night --</p> <p>4 Q. Um-hmm.</p> <p>5 A. -- we charge 5 percent. And we convert that</p> <p>6 uncollected money from the customers, and we take a</p> <p>7 risk. And minus the five percent, we pay you the rest</p> <p>8 of your money, which is 95 percent of your money.</p> <p>9 Q. Okay. And tell me mechanically, Mr. Davari,</p> <p>10 meaning if I'm a waitress and it's the -- my -- the end</p> <p>11 of my first night, how does the 5 percent get deducted?</p> <p>12 Who does it; what is the mechanics of it?</p> <p>13 A. Let's take example. If you have \$100 tips --</p> <p>14 Q. -- um-hmm.</p> <p>15 A. -- you get \$95 immediately.</p> <p>16 Q. Right. And who does that; who calculates?</p> <p>17 A. Bartenders.</p> <p>18 Q. Okay. So if there are a few bartenders on</p> <p>19 duty, the bartenders would split up the various tabs --</p> <p>20 A. Yeah.</p> <p>21 Q. -- for the waitresses?</p> <p>22 A. Each individual bartender runs the tabs.</p> <p>23 Q. Ok.</p> <p>24 A. Processes them.</p> <p>25 Q. All right. Is there a -- some kind of a sheet</p>	<p>1 Treasures, does Norman have a sheet where he adds up</p> <p>2 all of this 5 percent money?</p> <p>3 A. Yes.</p> <p>4 Q. What is that sheet called?</p> <p>5 A. Income -- I guess they call it -- there's a</p> <p>6 sheet that shows the details --</p> <p>7 Q. Okay.</p> <p>8 A. -- of the money coming to the house and then</p> <p>9 get reported to CPA.</p> <p>10 Q. Have you seen this detail sheet that shows</p> <p>11 money to the house, which reflects the 5 percent income</p> <p>12 to the club?</p> <p>13 A. Yes.</p> <p>14 Q. And you don't recall the name of that sheet?</p> <p>15 A. Doesn't have to have a name; it just an</p> <p>16 itemized sheet.</p> <p>17 Q. Okay. So -- the reason I ask is if I later</p> <p>18 ask your lawyers, and I say, "During Mr. Davari's</p> <p>19 deposition, he referenced details of money to the house</p> <p>20 sheet"; is that what I would call it?</p> <p>21 A. Yeah, just call it "detail sheet."</p> <p>22 Q. "Detail sheet." Okay.</p> <p>23 A. Or "itemized sheet" is a better name for it.</p> <p>24 I -- I will call it "itemized."</p> <p>25 Q. And who creates the itemized sheets?</p>
Page 39	Page 41
<p>1 for each waitress that tracks all of the charges</p> <p>2 they've had that night?</p> <p>3 A. No, just they keep track on it by the tab</p> <p>4 sheet, the drink sheet.</p> <p>5 Q. And is the tab sheet per customer?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So let's say a waitress has 20</p> <p>8 customers in a night, she will have 20 tab sheets?</p> <p>9 A. Yes.</p> <p>10 Q. And will the bartender make any pencil or pen</p> <p>11 calculation on the tab sheet?</p> <p>12 A. They make calculation if they need to, but I</p> <p>13 don't think that every one of them do that.</p> <p>14 Q. Okay.</p> <p>15 A. That's not general rule --</p> <p>16 Q. Okay.</p> <p>17 A. -- to make a calculation --</p> <p>18 Q. All right.</p> <p>19 A. -- as long as they pay 95 percent back to the</p> <p>20 waitress.</p> <p>21 Q. Okay. Where does the other 5 percent go?</p> <p>22 A. Stay inside a house.</p> <p>23 Q. Okay. And how is that accounted for in-house?</p> <p>24 A. As a processing fee.</p> <p>25 Q. I mean is the -- does -- for example, at</p>	<p>1 A. The information gets picked up by the</p> <p>2 bookkeeper.</p> <p>3 Q. At each club?</p> <p>4 A. Yes.</p> <p>5 Q. You charged 5 percent at Treasures, Splendor,</p> <p>6 Centerfold, and Gold Cup?</p> <p>7 A. No. I think it's different in each club.</p> <p>8 Q. What is the amount of the credit card</p> <p>9 processing fee at each club?</p> <p>10 A. I believe for Gold Cup, it's 4 percent.</p> <p>11 Q. Okay. And how about -- Treasures is 5</p> <p>12 percent, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Splendor and Centerfolds?</p> <p>15 A. I assume they are between 4 or 5. I'm not</p> <p>16 sure, but one of those numbers.</p> <p>17 Q. Do you think that the -- the risk of</p> <p>18 uncollected charges is greater at Treasures than at</p> <p>19 Gold Cup?</p> <p>20 A. Yes, the volume is way higher.</p> <p>21 Q. Okay. But as a percentage, though, the volume</p> <p>22 is higher, you earn more...</p> <p>23 A. Yeah, the percentage of uncollected charges is</p> <p>24 higher.</p> <p>25 Q. At Treasures?</p>

11 (Pages 38 to 41)

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Page 42	Page 44
<p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. It's proportional. It's the math.</p> <p>4 Q. Okay. Prior to -- well, strike that.</p> <p>5 How long have your clubs been assessing a</p> <p>6 4 or 5 percent credit card fee to the wait staff or</p> <p>7 bartender?</p> <p>8 A. As far as I know, I can go back to last three</p> <p>9 or four years it's been like that.</p> <p>10 Q. What did you do prior to that?</p> <p>11 A. It probably was -- maybe if I go a little bit</p> <p>12 longer, maybe higher.</p> <p>13 Q. Okay. So it might have been 6 or 7 percent...</p> <p>14 A. Right. Might be.</p> <p>15 Q. Okay. Who would know that for sure?</p> <p>16 A. Well, I can check into it. I don't know,</p> <p>17 really.</p> <p>18 Q. Okay.</p> <p>19 A. I got to maybe go to processing fee, what</p> <p>20 they're charging, because I kept only four years</p> <p>21 paperwork.</p> <p>22 Q. Okay.</p> <p>23 A. Maybe through the processing company.</p> <p>24 Q. Who made the decision, if you know, to lower</p> <p>25 the charges, let's say three, four years ago?</p>	<p>1 Q. Okay. I guess my point is if you believed</p> <p>2 that 6 percent was reasonable, as the owner, you had</p> <p>3 the authority to raise it if you want?</p> <p>4 A. Again, no. Because I have to stay within</p> <p>5 reason. What does the processing fee cost me. I</p> <p>6 wouldn't charge rate because I have authority; I</p> <p>7 wouldn't do that. I would do it within a reason, which</p> <p>8 is in a -- within a limit.</p> <p>9 Q. Okay.</p> <p>10 A. And benefit our tier one, which are the</p> <p>11 employees.</p> <p>12 Q. Now, the charges, 4 to 5 percent, are higher</p> <p>13 than the actual processing fee you're charged by the</p> <p>14 company, correct?</p> <p>15 A. No, it's not. I'm talking about the total</p> <p>16 cost for us due to the processing the credit card.</p> <p>17 Q. Right.</p> <p>18 A. I mentioned it before.</p> <p>19 Q. Right. Let me make sure my question is clear.</p> <p>20 If you take away the chargeback, if you take away that,</p> <p>21 and you look only at what that actual cost is for the</p> <p>22 processing of the transaction from a credit card</p> <p>23 service company, the amount you charge to the employee</p> <p>24 is higher than that?</p> <p>25 A. It's slightly greater than that number, yes.</p>
Page 43	Page 45
<p>1 A. I think each club manager did decide on their</p> <p>2 own.</p> <p>3 Q. Was that something you are -- you would be</p> <p>4 notified of?</p> <p>5 A. Not necessary. If they are within reason, not</p> <p>6 necessary.</p> <p>7 Q. Okay. Ultimately, you and David have to</p> <p>8 determine it's within reason?</p> <p>9 A. I am the one, yes, that determines within</p> <p>10 reason.</p> <p>11 Q. Okay. So when you heard about the charges of</p> <p>12 4 to 5 percent, you felt that was reasonable?</p> <p>13 A. Yes.</p> <p>14 Q. You approved it?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. To your knowledge --</p> <p>17 A. I didn't dispute it, though. Let's put it</p> <p>18 this way.</p> <p>19 Q. You let it remain?</p> <p>20 A. Yes.</p> <p>21 Q. You, if you wanted to, had the authority to</p> <p>22 adjust it higher or lower?</p> <p>23 A. I won't say I had the authority to adjust it</p> <p>24 to higher, because I stay within a reason which is</p> <p>25 beneficial to employees.</p>	<p>1 Q. Okay. So when you say "slightly greater," if</p> <p>2 the American Express processing fee is 2 percent, if</p> <p>3 that's what it is, and you charge 5 percent, it's over</p> <p>4 100 percent higher?</p> <p>5 A. No, because all our charges are not American</p> <p>6 Express. We're talking about Visa or MasterCard.</p> <p>7 Q. Okay.</p> <p>8 A. So we're not talking about one single card, so</p> <p>9 that's not correct.</p> <p>10 Q. If I told you that the documents you presented</p> <p>11 to me reflect about 2.6 to 2.7 percent average</p> <p>12 processing fee charge, would you have a reason to</p> <p>13 dispute that?</p> <p>14 A. On which card? On -- on --</p> <p>15 Q. On all of them by average. All of them on</p> <p>16 average.</p> <p>17 A. If you show it to me, I have to look at it.</p> <p>18 Q. Okay.</p> <p>19 A. Because that's not the information I have on</p> <p>20 hand.</p> <p>21 Q. What do you believe among MasterCard, Visa,</p> <p>22 Discover, and American Express, over the last three</p> <p>23 years, the average actual processing fee is?</p> <p>24 A. By reviewing the last few months, I believe</p> <p>25 the average cost of all the credit -- all type of</p>

12 (Pages 42 to 45)

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Page 46	Page 48
<p>1 credit cards, they are about 3 percent, maybe even a 2 little bit more, slightly more. 3 Q. Right. I'm not talking about the last few 4 months, though; I'm saying if you go back several 5 years. 6 A. Well, I gave you sample. 7 Q. Okay. 8 A. But if you've seen it, then we may look at it 9 together. 10 Q. My question is really, then, Mr. Davari: If 11 you were to go back to 2008, for example, do you have 12 an understanding of what the average credit card 13 processing fee among all the cards would be? 14 A. Yeah, the processing fee through the credit 15 card company would be around 3 -- 3 percent. 16 Q. Okay. So if you charged 5 percent to the 17 employee, then it is maybe 70 percent higher than the 18 actual cost of just the processing fee? 19 A. 2 percent out of 5 percent, that's a math 20 calculation, is not really 70 percent higher. So I 21 won't -- I'm a math major; I have to be exact on that. 22 Q. Okay. 23 A. So when you say "2 percent," it won't be 24 70 percent. 25 Q. Well, let me be clear, then.</p>	<p>1 A. That's the ratio. 2 Q. That's correct. 3 A. Two-thirds is the ratio; it's not a 4 percentage. 5 Q. Okay. I -- 6 A. If you spend -- 7 Q. Go ahead. 8 A. -- \$10 out of your \$100, the ratio is 1 to 10, 9 but you spend 10 percent of your money. Ratio and 10 percent is two different things. 11 Q. Well, that's understood. But if you have an 12 actual cost of 3 percent -- actual cost 3 percent? 13 A. Yes. 14 Q. Okay. And then you make it 5 percent, okay, 15 you have to look at what you're adding to the 3 16 percent. You don't take it out of the total, you take 17 it out of 3, correct? 18 A. Yes. We get to -- okay. Go ahead, please. 19 Q. So my question is: If you're adding 2 20 percent, how much higher is -- 21 A. 2 percent higher. 22 Q. That's right. And -- and as a percentage of 23 the total, you're increasing from 3 percent, so you 24 have to -- 25 A. I think this is a math dispute. I won't</p>
Page 47	Page 49
<p>1 A. Okay. 2 Q. If you -- 3 A. We can say 2 percent compared to 5 percent, 4 that's a very simple calculation. 5 Q. Well, 2 percent is 40 percent of 5 percent; is 6 that correct? 7 A. 2 percent, yes. 8 Q. All right. 9 A. Exactly, so it's not 70 percent higher. 10 Q. Well, let me make sure we can do our 11 calculations then -- 12 A. Correct. 13 Q. I'm -- I'm not a math major -- 14 A. Sure. 15 Q. -- so I'm looking forward to see where we end 16 up. 17 A. All right. 18 Q. If -- if you're looking at a number, let's say 19 you say the actual is 3 percent, and you charge 20 5 percent, how much higher is 5 percent than 3 percent? 21 A. It's 40 percent. 22 Q. 2 percent is 40 percent of 5, correct? 23 A. Right. 24 Q. What is 2 over 3, right, because you're saying 25 how much higher it is.</p>	<p>1 continue on this, because maybe -- 2 Q. You don't think that -- 3 A. All I can tell you is if you had a ratio 2 to 4 3 -- 5 Q. Yeah. 6 A. -- and the percentage 40 percent above, if 7 it -- the whole thing is 100 percent, this is 8 40 percent, according to you -- your call. 9 Q. What's 40 percent of 3? 10 A. 40 percent of 5. We're talking about the 11 total percentage. 12 Q. I'm looking at how much higher than 3 we are. 13 A. I think -- that's all I can explain it to you. 14 Q. Okay. 15 A. You can put it any way you want to put it. 16 Q. All right. Fair enough. 17 And prior to letting these charges remain 18 three or four years ago, did you undertake -- did you 19 undertake any kind of a statistical analysis or 20 mathematical analysis to determine what would be fair 21 and reasonable? 22 A. On what? Under... 23 Q. When -- I'm going back now, before our math 24 discussion. 25 A. Yes.</p>



Page 50

1 Q. When the managers of the clubs you said  
2 lowered the percentages to 4 to 5 percent, and you said  
3 that you permitted that to remain, you felt it was  
4 within reason, correct?  
5 A. Yes.  
6 Q. Did you undertake any analysis of any kind to  
7 determine that that was a reasonable number?  
8 A. I understood the credit card company, they  
9 dropped -- they dropped the charges. That's what I  
10 understood.  
11 Q. Okay. Did you undertake -- personally, did  
12 George Davari undertake any kind of an analysis where  
13 you said to Glenda or Laura or Norman or others, "Give  
14 me all of the raw data on credit cards so I can  
15 determine if 5 percent is reasonable"?  
16 A. I reviewed some of the processing fee -- I  
17 mean, the processing statement years ago --  
18 Q. Um-hmm.  
19 A. -- at that point, and I saw that year, that  
20 was -- that was reasonable.  
21 Q. What years -- when you say "years ago," how  
22 long ago?  
23 A. The time you referred to.  
24 Q. Okay. So there was some deliberation, there  
25 was some review and analysis that you undertook to make

Page 51

1 sure the percentage was reasonable in your mind?  
2 A. It was reason to drop it, yes, or -- yeah,  
3 that amount was reasonable, yes.  
4 Q. Okay. Did you review chargeback data to  
5 determine what amount should be added to the processing  
6 fee?  
7 A. Yes.  
8 Q. Okay. And what did you look at?  
9 A. That's something I really review on a regular  
10 basis. That amount is -- exceed more than 2 percent.  
11 Q. Okay.  
12 A. It exceed more than the 2 percent we add onto.  
13 Q. Okay. But my point is you reviewed the  
14 chargeback data back then to make sure that the percent  
15 you were charging was in line?  
16 A. I said I reviewed the chargebacks  
17 periodically.  
18 Q. And you did back --  
19 A. Yes.  
20 Q. That's fine. Okay.  
21 Now, did you consult a lawyer -- well, strike  
22 that.  
23 Did -- did you -- what did you do, if  
24 anything, to determine whether it was legal to include  
25 the chargeback in the processing fee charged to the

Page 52

1 employee?  
2 A. My understanding is I can -- because I assume  
3 the risk to liquidate that money immediately, same  
4 time --  
5 Q. Right.  
6 A. -- to the employees, I'm allowed to take  
7 2 percent to -- which not exceed the chargeback's cost  
8 to me.  
9 Q. Right. My question was really: Where --  
10 A. That was my understanding.  
11 Q. Where did you get that understanding?  
12 A. That's just the knowledge I had. I can't  
13 really refer to it directly.  
14 Q. I'm going to give you an example.  
15 A. Yes.  
16 Q. So another business owner in a deposition said  
17 to me, "Look at the time we agreed to 5 percent, I  
18 contacted a CPA, and I made sure of the rules and  
19 regulations."  
20 Another business owner at a deposition  
21 said he called the Department of Labor to check certain  
22 things. What, if anything -- and I am not saying you  
23 did anything, but what did you do at the time that the  
24 5 percent was implemented to -- to verify it?  
25 A. Let me make it clear.

Page 53

1 Q. Yeah.  
2 A. I think we had at one point audit with DOL and  
3 they were okay with it.  
4 Q. Okay. And when was the audit?  
5 A. Several years ago.  
6 Q. Can you give me a year?  
7 A. About six, seven years ago.  
8 Q. Okay. And do you have any documents or any  
9 paperwork that would show that?  
10 A. No, sir.  
11 Q. Is it your testimony that the DOL looked into  
12 the credit card processing fee charged to the employee?  
13 A. They did not complain about it.  
14 Q. The employees did not --  
15 A. No --  
16 Q. -- or the --  
17 A. -- the DOL didn't complain.  
18 Q. Did the DOL look into that specifically?  
19 A. I believe he did.  
20 Q. Why do you believe that?  
21 A. Because I'm pretty sure all of it -- it's a  
22 full balloon investigation of paperworks.  
23 Q. All right. But in fairness, that -- you're  
24 speculating what he looked into, then?  
25 He did not tell you he looked into that, did

14 (Pages 50 to 53)

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Page 54	Page 56
<p>1 he?</p> <p>2 A. He was okay with it, I assume.</p> <p>3 Q. I understand that. I guess my question is:</p> <p>4 Did the DOL auditor or anyone from the DOL tell you</p> <p>5 that they investigated the credit card processing fee</p> <p>6 passed along to the employee?</p> <p>7 A. At one point, I guess I consulted this and --</p> <p>8 with my lawyer.</p> <p>9 THE WITNESS: Lauren, did you remember</p> <p>10 that?</p> <p>11 MS. SERPER: Yeah, I'm going to -- on the</p> <p>12 record, asked and answered. He's told you everything</p> <p>13 he remembers, and, you know, I -- I don't know what</p> <p>14 more he can say.</p> <p>15 MR. SHELLIST: We'll find out.</p> <p>16 Q. (BY MR. SHELLIST) I mean, I'm not going to</p> <p>17 beat a dead horse. But what was the name of the</p> <p>18 auditor?</p> <p>19 A. I don't remember.</p> <p>20 Q. Okay. And do you recall the auditor saying to</p> <p>21 you, "I looked at the credit card processing fee and</p> <p>22 it's okay with the DOL"?</p> <p>23 A. I do not remember auditor conversation in</p> <p>24 detail at all.</p> <p>25 Q. Okay.</p>	<p>1 it to the cash, shouldn't be a problem --</p> <p>2 Q. Okay.</p> <p>3 A. -- to exceed -- to cover portion of expenses,</p> <p>4 such as chargebacks.</p> <p>5 Q. And I understand that that is your feeling and</p> <p>6 opinion. I know that.</p> <p>7 A. Yes.</p> <p>8 Q. My question is: Where is that understanding</p> <p>9 that the FLSA allows you to do that?</p> <p>10 Where do you get that from?</p> <p>11 A. Some knowledges just come to you. You don't</p> <p>12 remember the source exactly.</p> <p>13 Q. Okay.</p> <p>14 A. Like every -- every bit of my day activity, I</p> <p>15 can't go to the force -- nail it down to the source.</p> <p>16 Q. Right.</p> <p>17 A. Such as you cannot, really. If I ask same</p> <p>18 question, you won't be able to answer some of these</p> <p>19 questions.</p> <p>20 Q. No, and please know this is not a memory test.</p> <p>21 A. Then I guess I -- I answered your question.</p> <p>22 Q. You did. You said --</p> <p>23 A. Yes, sir.</p> <p>24 Q. It's general knowledge; you cannot remember</p> <p>25 the source.</p>
Page 55	Page 57
<p>1 A. It doesn't come to my mind.</p> <p>2 Q. Okay. Okay. So other than the DOL audit that</p> <p>3 occurred maybe six years ago, you mentioned that you</p> <p>4 might have sought advice from lawyers, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Roughly, what time frame would that be?</p> <p>7 A. About what? About the same time.</p> <p>8 Q. Okay. Meaning --</p> <p>9 A. Maybe a few months later.</p> <p>10 Q. Okay. So if we forget for a moment about the</p> <p>11 DOL -- and I just want to make sure what, if anything,</p> <p>12 did you do to verify that it was okay to charge this</p> <p>13 extra percentage -- you know, this chargeback risk</p> <p>14 money you're talking about -- to the employee?</p> <p>15 Other than the DOL, did you seek approval or</p> <p>16 advice from any other source?</p> <p>17 A. No, sir.</p> <p>18 Q. Okay.</p> <p>19 A. I believe on their FLSA --</p> <p>20 Q. Yes.</p> <p>21 A. -- you allowed to -- that is my understanding,</p> <p>22 is --</p> <p>23 Q. Okay.</p> <p>24 A. -- that reasonable charges due to the fact we</p> <p>25 take a risk to liquidate the tips, immediately convert</p>	<p>1 A. Business knowledge, I would call it.</p> <p>2 Q. Okay. Meaning things you gained over the</p> <p>3 years?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. It was not like a book you read that</p> <p>6 you recall the title of?</p> <p>7 A. I just answered that question. I don't know</p> <p>8 if I can explain it any better.</p> <p>9 Q. Okay. Well, this area -- this lawsuit is</p> <p>10 very, very, very --</p> <p>11 A. I understand. But I told you this is my</p> <p>12 business knowledge I gain over several years.</p> <p>13 Q. Okay. In the past four years --</p> <p>14 A. I might have read a book. I might have read</p> <p>15 something. I can't remember. I can't make</p> <p>16 recollection.</p> <p>17 Q. Okay. That's fair enough.</p> <p>18 At the time three or four years ago when</p> <p>19 the percentages were lowered, did you undertake any</p> <p>20 analysis at that point, specifically?</p> <p>21 We've already talked about six or seven</p> <p>22 years ago. Now going back three or four years when the</p> <p>23 percentage was lowered, was there any new analysis</p> <p>24 undertaken to determine whether that percentage is</p> <p>25 reasonable?</p>

15 (Pages 54 to 57)

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Page 58	Page 60
<p>1 A. I did not -- no, I didn't take any analysis.</p> <p>2 Q. Okay.</p> <p>3 A. But I believe it was within reason, my</p> <p>4 personal belief.</p> <p>5 Q. I understand that. Okay.</p> <p>6 Now, your companies, your adult</p> <p>7 companies, contest the chargebacks routinely, correct?</p> <p>8 A. You mean protest it?</p> <p>9 Q. Yes.</p> <p>10 A. It's depend.</p> <p>11 Q. As a percentage of chargebacks, what</p> <p>12 percentage do you protest?</p> <p>13 A. I pretty much try to protest all of them.</p> <p>14 Q. Okay. And what percentage of those would you</p> <p>15 say you win?</p> <p>16 A. I don't have that numbers.</p> <p>17 Q. Can you -- if we understand, you're --</p> <p>18 A. I would say --</p> <p>19 Q. -- giving a reasonable guess?</p> <p>20 A. I can tell you what percentage. When I</p> <p>21 convert it to what is reasonable to collect from the</p> <p>22 waitresses or the server, it come to 2 percent. I can</p> <p>23 only talk about the conversion we do on a monthly basis</p> <p>24 within a reason.</p> <p>25 Q. And you actually did that specific analysis?</p>	<p>1 and they say "Okay, this is" -- they credit it to the</p> <p>2 customer, that's the end of it; they have recourse.</p> <p>3 Q. Okay.</p> <p>4 A. There is not far we can go.</p> <p>5 Q. Okay. So it's resolved very quickly and</p> <p>6 easily, one way or the other?</p> <p>7 A. I would say 90 percent in favor of the</p> <p>8 customers.</p> <p>9 Q. Oh, okay. So you think 90 percent of the</p> <p>10 protests go against you?</p> <p>11 A. It just result to the benefit of the customer.</p> <p>12 I really can't give you the percentage, but I know that</p> <p>13 most of the time it does.</p> <p>14 Q. Okay.</p> <p>15 A. I would really have to work it in numbers.</p> <p>16 Q. Well, no, that's okay. Where are those</p> <p>17 numbers?</p> <p>18 A. Okay. What numbers? The credit card</p> <p>19 chargeback --</p> <p>20 Q. No, the --</p> <p>21 A. Okay. What numbers?</p> <p>22 Q. Here's what I'm asking: Where is the</p> <p>23 paperwork that shows when a protest to a chargeback</p> <p>24 occurs?</p> <p>25 A. They -- if you list -- for example, tomorrow</p>
Page 59	Page 61
<p>1 A. Right.</p> <p>2 Q. Is that written somewhere?</p> <p>3 A. I did it on my own. I look at the</p> <p>4 chargebacks, just sample auditing --</p> <p>5 Q. Um-hmm.</p> <p>6 A. -- and I realize still I'm within reason.</p> <p>7 Q. When did you do that analysis?</p> <p>8 A. Periodically, as needed. Just by reviewing</p> <p>9 the chargebacks.</p> <p>10 Q. Um-hmm.</p> <p>11 A. Chargeback get picked up by the CPA.</p> <p>12 Q. Right.</p> <p>13 A. And I compare it to what we charge, and that's</p> <p>14 within reason.</p> <p>15 Q. So where is the paperwork that shows the</p> <p>16 protests of chargebacks?</p> <p>17 A. Basically, I don't do that on -- myself. But</p> <p>18 we usually just send them a form, and they just send</p> <p>19 the processing company a copy of the tabs.</p> <p>20 Q. The signed tabs?</p> <p>21 A. The signed tabs. And at their discretion, we</p> <p>22 have a recourse with them that if they're disputed,</p> <p>23 that's the end of it.</p> <p>24 Q. If who disputes?</p> <p>25 A. The credit card company dispute the charges,</p>	<p>1 you call and you protest your credit card or you</p> <p>2 dispute it, we send the copy of all your charges to the</p> <p>3 credit card company through the fax. And that's it.</p> <p>4 We fax all the documents, and the paperwork go back to</p> <p>5 our file. Like we grab your tab -- your paperwork --</p> <p>6 Q. Um-hmm.</p> <p>7 A. -- we send it to credit card company, and we</p> <p>8 pull it back whoever it belong to that day.</p> <p>9 Q. Who is in charge of the protesting that works</p> <p>10 under you?</p> <p>11 A. Each club, they do it on their own.</p> <p>12 Q. Okay. So when a contest, a chargeback occurs,</p> <p>13 how is the club notified?</p> <p>14 A. I just fax them all -- yeah, most of the time</p> <p>15 they fax -- yeah, they fax them, I believe.</p> <p>16 Q. To each club individually --</p> <p>17 A. Yes.</p> <p>18 Q. -- or to D. Texas?</p> <p>19 A. No, to each club individually.</p> <p>20 Q. Okay. And then who at each club is</p> <p>21 responsible for protesting?</p> <p>22 A. Pretty much the name I mentioned.</p> <p>23 Q. The -- Norman?</p> <p>24 A. Norman. And you got the names, right?</p> <p>25 Q. Yeah. Ilean?</p>

16 (Pages 58 to 61)

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Page 62	Page 64
<p>1 A. Sam.</p> <p>2 Q. And Wahid?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And if a chargeback is granted in your</p> <p>5 favor, meaning if your protest is upheld, the credit</p> <p>6 card company lets you keep the money --</p> <p>7 A. Yes.</p> <p>8 Q. -- do they notify you in writing?</p> <p>9 A. Yes, they do. I believe they do. But what it</p> <p>10 is, we see it mostly through -- we control it through</p> <p>11 the bank statement. That will not have been deducted.</p> <p>12 We monitor the chargeback through the bank statements.</p> <p>13 Q. Okay. And what is the bank statement -- what</p> <p>14 is that?</p> <p>15 Is that from each of the card services that</p> <p>16 you use?</p> <p>17 A. No, the bank -- the bank statements show how</p> <p>18 much they deduct our account.</p> <p>19 Q. Okay. So if you used Well -- Wells Fargo, for</p> <p>20 example --</p> <p>21 A. Yes.</p> <p>22 Q. -- you would look at that account?</p> <p>23 A. Yes, it says "chargeback," I believe, on it.</p> <p>24 Q. And if it goes in your favor, then you get</p> <p>25 credited the money?</p>	<p>1 my counselor.</p> <p>2 Q. Okay. All right. Other than United Bank</p> <p>3 Card, can you recall any other names?</p> <p>4 A. I think -- some of these company have gone</p> <p>5 through the changes. Maybe SunTrust.</p> <p>6 Q. Okay.</p> <p>7 A. Brown-Forman.</p> <p>8 Q. Have you ever heard of Successful Data</p> <p>9 Systems?</p> <p>10 A. Successful Data Systems?</p> <p>11 Q. Yeah.</p> <p>12 A. Not to my recollection right now.</p> <p>13 Q. Okay. Now, do you only use one credit card</p> <p>14 processing company at a time?</p> <p>15 A. Yes, at a time.</p> <p>16 Q. Okay. And who chooses the credit card</p> <p>17 processing company?</p> <p>18 A. Basically, discuss it with the managers.</p> <p>19 Q. Um-hmm.</p> <p>20 A. And if they're okay with the rates, then I'll</p> <p>21 approve it.</p> <p>22 Q. Okay. And is there any negotiation with the</p> <p>23 credit card processing company, as far as the rate and</p> <p>24 how to handle chargebacks and all of that?</p> <p>25 A. They pretty much make up their mind what they</p>
Page 63	Page 65
<p>1 A. Basically, when we look at the chargeback,</p> <p>2 it's what we didn't get paid. If it's in our favor, it</p> <p>3 has nothing to do with the chargeback.</p> <p>4 For example, if all of the chargebacks,</p> <p>5 parts of it got granted, the portion that they didn't</p> <p>6 get paid, shows as a chargeback. And that's what we</p> <p>7 take as a chargeback, if that answers your question.</p> <p>8 Q. It does. And that is reflected on the Wells</p> <p>9 Fargo paperwork?</p> <p>10 A. Bank statement. Yeah, it should.</p> <p>11 Q. Okay. What credit card processing company do</p> <p>12 you use?</p> <p>13 A. I can provide a name to you.</p> <p>14 Q. Okay. There are some names. I want to see --</p> <p>15 I know that you may have used a few different ones over</p> <p>16 the years?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Let me see. There was one called "United Bank</p> <p>19 Card"?</p> <p>20 A. That's correct. I'm familiar with that name.</p> <p>21 Q. Do you still use them?</p> <p>22 A. I won't be able to answer that question.</p> <p>23 Q. Okay. Who would know which processing company</p> <p>24 you use?</p> <p>25 A. I can provide that information to you through</p>	<p>1 offer you, and it would be better if you go with the</p> <p>2 rate, because they've already evaluated your business.</p> <p>3 Q. Okay. And I assume that -- that as a business</p> <p>4 owner, you look over time to make sure you're getting</p> <p>5 the best deal you can?</p> <p>6 A. Sometimes, yes.</p> <p>7 Q. Okay. Is there anyone like Brenda who -- and</p> <p>8 I'm not saying it is Brenda, but is there anyone below</p> <p>9 you like Brenda who is responsible for interacting with</p> <p>10 the credit card processing company?</p> <p>11 A. At what level?</p> <p>12 Q. At the company level. At the -- at your</p> <p>13 level, meaning the --</p> <p>14 A. There's not so much interacting, because after</p> <p>15 the account is set, the charges get processed on</p> <p>16 automatic basis. We get our money, and the chargeback</p> <p>17 is deducted. That's about -- there's not that much</p> <p>18 interact. I don't recall that interact required. It's</p> <p>19 not like daily --</p> <p>20 Q. Right.</p> <p>21 A. -- things you get on the phone and talk to</p> <p>22 them.</p> <p>23 Q. Okay. So if you changed a card processing</p> <p>24 company, it would occur maybe every few years; it's</p> <p>25 nothing that would happen monthly?</p>

17 (Pages 62 to 65)

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Page 66	Page 68
<p>1 A. Exactly.</p> <p>2 Q. Okay. Now I understand.</p> <p>3 And are all of the clubs' nightly accounts</p> <p>4 processed -- the credit card accounts -- processed</p> <p>5 through -- if you're -- at the time, if you're using</p> <p>6 United Bank Card, are they all processed through United</p> <p>7 Bank Card?</p> <p>8 A. Not necessary. Each one of them could have</p> <p>9 their own processing company. It depends who they</p> <p>10 choose -- chose.</p> <p>11 Q. Well, that's what I'm asking, then, is: Do</p> <p>12 your clubs use different credit card processing</p> <p>13 companies?</p> <p>14 A. Yes, different clubs, I believe, use different</p> <p>15 processing company, yes.</p> <p>16 Q. Why would they do that if one is better than</p> <p>17 the other?</p> <p>18 Why would you allow that?</p> <p>19 A. Some of them, I guess, they already got --</p> <p>20 No. 1, it's very difficult to switch from one to</p> <p>21 another one, because you have to go through all the</p> <p>22 bank things like this. And that's what I can tell you.</p> <p>23 Q. So today, do you use one credit card</p> <p>24 processing company or many different ones?</p> <p>25 A. I probably say more than one.</p>	<p>1 Q. All right. I understand you made a call or so</p> <p>2 during the break to help answer a question or two.</p> <p>3 What did you find?</p> <p>4 A. For the processing company, you mentioned --</p> <p>5 Q. Yes.</p> <p>6 A. The name of the processing company, we use</p> <p>7 SunTrust, which is, I guess, merged with First Data --</p> <p>8 Q. Okay.</p> <p>9 A. -- for some of the clubs, like Splendor, and</p> <p>10 Centerfolds. And Cover Girl, and Treasures, we use</p> <p>11 United.</p> <p>12 Q. Now, I don't need you to make other calls, but</p> <p>13 if you know, what are the -- what is the difference in</p> <p>14 the rates that you get from each one?</p> <p>15 A. I don't know that.</p> <p>16 Q. Okay.</p> <p>17 A. Sometimes it's not just rate; it's a service.</p> <p>18 Q. Okay. I'm presuming that one company is</p> <p>19 better than another company, so who made the decision</p> <p>20 to use different -- two different companies currently?</p> <p>21 A. By each club manager, their own manager.</p> <p>22 Q. Okay. Do you have --</p> <p>23 A. Sometime they go there --</p> <p>24 Q. Okay.</p> <p>25 A. -- and talk to the manager, and then refer it</p>
Page 67	Page 69
<p>1 Q. All right. And I understand. Listen --</p> <p>2 A. And to answer your question...</p> <p>3 Q. Yes. Go ahead.</p> <p>4 A. You have any good offer with the credit card</p> <p>5 company, I may talk to you.</p> <p>6 Q. Right. No, I understand. You want to try to</p> <p>7 save as much money as possible.</p> <p>8 A. Right.</p> <p>9 Q. But -- and -- and, again, I don't -- I'm not</p> <p>10 expecting you to guess. I understand some of this you</p> <p>11 know, some of it you have to check on. But sitting</p> <p>12 there today, do you know whether you use more than one</p> <p>13 credit card processing company for sure?</p> <p>14 A. I need to check on that.</p> <p>15 Q. Okay. That's fine.</p> <p>16 MR. SHELLIST: Do you guys want to take a</p> <p>17 two-minute break or do you want to --</p> <p>18 MS. SERPER: Sure.</p> <p>19 (Break from 11:33 a.m. to 11:48 a.m.)</p> <p>20 Q. (BY MR. SHELLIST) Mr. Davari, at the break,</p> <p>21 we had -- we're back. Are you ready to proceed?</p> <p>22 A. Yes.</p> <p>23 Q. You understand you're still testifying under</p> <p>24 oath?</p> <p>25 A. Yes.</p>	<p>1 to me --</p> <p>2 Q. Okay.</p> <p>3 A. -- if they approve it.</p> <p>4 Q. And if it looks reasonable, you will approve</p> <p>5 it?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Do you have a company e-mail system?</p> <p>8 A. Yes.</p> <p>9 Q. And, for example, you have a company e-mail</p> <p>10 address?</p> <p>11 A. What do you mean?</p> <p>12 Q. Like, would I look up "hdavari@dtexas.com" or</p> <p>13 do you have a -- an e-mail address for business?</p> <p>14 A. I have e-mail address for business.</p> <p>15 Q. What is that?</p> <p>16 A. It's "georged@birch.net."</p> <p>17 Q. Okay. Is Birch the company that you use for</p> <p>18 all of your employees in the e-mail?</p> <p>19 A. That's -- I would say that's the one I use.</p> <p>20 Q. Okay. So, for example, does Brenda have an</p> <p>21 e-mail address with Birch?</p> <p>22 A. I believe she does, yeah.</p> <p>23 Q. Okay. So if -- if at some point down the road</p> <p>24 if I needed access to see different e-mail between you</p> <p>25 and Brenda or someone else on a topic, you could search</p>

18 (Pages 66 to 69)



Page 70	Page 72
<p>1 the birch.net e-mail account to see?</p> <p>2 A. I can tell you I have an e-mail account there,</p> <p>3 so if you look at it, you can see me.</p> <p>4 Q. Okay. Do you --</p> <p>5 A. And that's what we use for company.</p> <p>6 Q. Okay. So do you delete your own e-mail?</p> <p>7 A. Sometimes I do, yes.</p> <p>8 Q. And when you are going to your work computer</p> <p>9 to look at the e-mail or at home to check your e-mail,</p> <p>10 do you use Outlook?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And do you retain a lot of your e-mail</p> <p>13 based on -- you know, from different business</p> <p>14 activities?</p> <p>15 A. If the -- if it's important, yeah, maintain</p> <p>16 it.</p> <p>17 Q. Okay. And does your company computer have any</p> <p>18 kind of a backup system?</p> <p>19 MS. SERPER: If you know.</p> <p>20 (Phone ringing.)</p> <p>21 THE WITNESS: Sorry.</p> <p>22 A. Okay. Go ahead.</p> <p>23 Q. (BY MR. SHELLIST) Yeah, only if you know. Do</p> <p>24 you know whether or not your company e-mail --</p> <p>25 A. I'm not sure.</p>	<p>1 D. Texas computers?</p> <p>2 A. Yes, he done work. He set up computer for me.</p> <p>3 Q. Okay. So if I had questions about the backup</p> <p>4 system or whatever you have as a setup, Jason would</p> <p>5 know?</p> <p>6 A. Yes.</p> <p>7 Q. All right. I'll leave a blank in the</p> <p>8 deposition for his last name.</p> <p>9 A. Um-hmm.</p> <p>10 Q. If you remember it, when you review it, you</p> <p>11 can fill it in. If you do not know it, I'll try to get</p> <p>12 it from your lawyers if I need it, okay?</p> <p>13 A. Sure.</p> <p>14 (Information Requested)_____.</p> <p>15 Q. Who is -- if you know, who is Chuck Saden?</p> <p>16 A. Chuck Saden, I guess he's one of the person --</p> <p>17 he's the agent for one of the processing companies.</p> <p>18 Q. How about Robert Steele?</p> <p>19 A. Robert Steele, he's the one that -- he does</p> <p>20 work for us.</p> <p>21 Q. In what way; what does he do?</p> <p>22 A. He pretty much -- miscellaneous item.</p> <p>23 Q. Okay. So if you were going to describe to me</p> <p>24 or a jury so I would know what he does within your</p> <p>25 organization, what would you tell me?</p>
Page 71	Page 73
<p>1 Q. -- is backed up?</p> <p>2 A. I'm not sure.</p> <p>3 Q. Do you have an IT person that works for you?</p> <p>4 A. Not as a -- just -- just for me, yeah.</p> <p>5 Q. Who do you use for IT work?</p> <p>6 A. You mean the technical support?</p> <p>7 Q. Yeah, for the computer repair, Internet</p> <p>8 support, those things?</p> <p>9 A. I use individual.</p> <p>10 Q. What is his name?</p> <p>11 A. Jason.</p> <p>12 Q. Last name is?</p> <p>13 A. I can't remember. It's Goco...</p> <p>14 Q. Does he have a company name?</p> <p>15 A. No. I know him by his name, Jason.</p> <p>16 Q. Does he do work for D. Texas?</p> <p>17 A. No, he's individual.</p> <p>18 Q. No, no, no. What I mean is when he helps out,</p> <p>19 does he help do work at the 6200 Richmond office?</p> <p>20 A. No, he work for any place that they need him.</p> <p>21 He doesn't work for D. Texas.</p> <p>22 Q. Okay. So if one of the clubs needs help with</p> <p>23 a computer, he can help?</p> <p>24 A. He can help them directly, yes.</p> <p>25 Q. Okay. And has he ever done work with the</p>	<p>1 A. He could be supervising construction at one</p> <p>2 point. He could be to set up account for a charge --</p> <p>3 for the processing company.</p> <p>4 Q. Okay.</p> <p>5 A. And, basically, this category.</p> <p>6 Q. So it could be overseeing construction or</p> <p>7 credit card processing?</p> <p>8 A. It could be assistant to me on any of those</p> <p>9 cases, or just as needed, again.</p> <p>10 Q. When he gets paid, what company or companies</p> <p>11 pay him?</p> <p>12 A. I believe he is -- I have to check into that.</p> <p>13 Q. Okay. Now, is he a -- an employee or a con --</p> <p>14 independent contractor?</p> <p>15 A. No, right now he's a -- recently he's an</p> <p>16 employee.</p> <p>17 Q. Okay. For what entity?</p> <p>18 A. For D. Houston.</p> <p>19 Q. Okay. And does he do work for D. Texas or</p> <p>20 other clubs if you need?</p> <p>21 A. He basically work for that entities.</p> <p>22 Q. I understand maybe he spends a lot of time</p> <p>23 with that entity, but if you need him to do help at --</p> <p>24 with D. Texas or the other entities, can he do that?</p> <p>25 A. If I have a question and ask him, he</p>

19 (Pages 70 to 73)



Page 74

1 definitely answers.

2 Q. Okay. So he is -- currently acts as an  
3 assistant for you?

4 A. I wouldn't call it so much assistant. I would  
5 say he's more active in D. Houston, Treasure.

6 Q. Is he a manager?

7 A. No, he's basically to -- assistant to me,  
8 maybe, on that level only at Treasure.

9 Q. Okay. So if you need help with setting up a  
10 credit card processing company, let's say at Splendor,  
11 you're not allowed to ask him that; you -- you would  
12 only keep him doing things at D. Houston?

13 A. I'm allowed to ask even you.

14 Q. Yeah.

15 A. So I -- I can ask him. I may ask him.

16 Q. Okay.

17 A. There's no restriction on who I can ask.

18 Q. Does he have an office at D. Houston?

19 A. He has -- not -- not office. No, not really.

20 Q. Does he --

21 A. But he -- there's an office he can go there  
22 most of the time when he wants to spend time.

23 Q. Does he also do some work at 6200 Richmond?

24 A. He come there to visit with me, yes.

25 Q. Okay. How about Mitch Cook. Who is that?

Page 75

1 A. Mitch Cook is the day manager at Treasures.

2 Q. Okay. Now, when we're talking a moment ago  
3 before the break about the chargebacks, if I wanted to  
4 see --

5 A. And I'm sorry. I need to go back.

6 Q. Go ahead.

7 A. On Mitch Cook --

8 Q. Yes.

9 A. I would call him lead manager, too.

10 Q. So he is in charge even of other managers?

11 A. He -- he's lead manager. He can communicate  
12 between me and night manager, if I don't get to see him  
13 or someone I cannot see him.

14 Q. I assume Mitch has been with you for a while?

15 A. Yes.

16 Q. Okay. Is there anyone else at Treasures as  
17 well named Bill?

18 A. Yes.

19 Q. What is his last name?

20 A. Bill Peter. William Peter.

21 Q. And how long has he been with you?

22 A. Many years.

23 Q. Okay. Do any -- to your knowledge, do any of  
24 the waitresses give any tips to the managers?

25 A. No.

Page 76

1 Q. Okay. Is that -- why is there a policy  
2 against that?

3 A. I'm strongly against that. They know that.

4 Q. Okay. Okay. All right. So a moment ago, we  
5 were talking about the chargebacks. If -- if I wanted  
6 to see the successful protests, I think you said we  
7 could look at the -- bank records would show when you  
8 get the credited money back; is that right?

9 A. I don't know it for sure. I'd have to look at  
10 the bank statement. They go to CPA. But what it is,  
11 the chargeback, they mark as chargeback. And that's  
12 how we -- the way we pay because the money we don't get  
13 collected.

14 Q. So let's say that a charge goes through one  
15 might, as an example, for \$500. And the week -- two  
16 weeks later, the man gets the bill. He contests the  
17 charge. You get notified of that by the credit card  
18 company, correct?

19 A. Yes.

20 Q. And then most of the time, you or one of your  
21 employees will protest the chargeback?

22 A. I don't protest it. Each club, they do  
23 protest their own charge backs. So it's not me,  
24 really, the one protesting. Each club, they've got  
25 their own account, and they're dealing with their own

Page 77

1 chargebacks.

2 Q. The bookkeeper would deal with it?

3 A. Yes.

4 Q. Okay. And if that is successful, your protest  
5 is successful, how does the club learn of it?

6 A. Well, I guess the -- if they retain, I believe  
7 so.

8 Q. The money gets credited?

9 A. What it is --

10 Q. Yeah.

11 A. In my recollection, they put a chargeback,  
12 what -- by meaning of that, when the account get  
13 protested, it don't get really charged back  
14 immediately, they send us their support paperwork.

15 Q. Okay.

16 A. Then we send it in to satisfy them. Then  
17 there's no obviously chargeback. So it's not like they  
18 go back and forth credit, as far as I know.

19 Q. Okay.

20 A. If it's chargeback, it's charged back. But if  
21 they prove the charge, I believe what it is, then we  
22 don't get deducted for it. So they've got some period  
23 of time to respond to the charge back.

24 Q. Okay. And --

25 A. So that, I guess, eliminate that return you're

20 (Pages 74 to 77)

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